SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1033

BRASWELL MOTOR FREIGHT LINES, INC., *Petitioner*,

v.

TEAMSTERS LOCAL UNIONS 745, 47, 968, 988, 270, 5, 568, 997 and 801, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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BRASWELL MOTOR FREIGHT LINES, INC., *Petitioner*,

v.

TEAMSTERS LOCAL UNIONS 745, 47, 886, 523, 270, 5, 568, 667 and 891, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Braswell Motor Freight Lines, Inc., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit (428 F.2d 1371) entered in the above entitled case on June 30, 1970.

OPINIONS BELOW

The "arbitral award" and transcript of the proceedings of the Grievance Committee under the National Master Freight Agreement is printed, in its

entirety, as Exhibit "A" to this Petition. (*infra*, pp. i-ix)

The Fifth Circuit opinion to which this petition is addressed was filed on June 30, 1970, reported at 428 F.2d 1371 and is printed separately in Appendix A[1] filed herewith, pages 1a-6a. The Pre-trial Order, Findings of Fact, Conclusions of Law and Decree for Permanent Injunction of the District Court filed November 8, 1969 are included in Appendix A, pages 7a-44a. The Findings of Fact and Conclusions of Law of the District Court filed July 7, 1966 are included in Appendix A, pages 45a-54a and the Order of the District Court denying Plaintiffs' Motion for Summary Judgment and Granting Defendants's Motion for Summary Judgment filed July 7, 1966 is included herein in Appendix A, pages 55a-56a. The Fifth Circuit opinion reversing the judgment of the District Court on March 25, 1968 and remanding to the District Court for entry of summary judgment for the unions is reported at 392 F.2d 1, and is included in Appendix A, pages 56a-69a. The Fifth Circuit opinion modifying its opinion of March 25, 1968, issued on June 28, 1968, is reported at 395 F.2d 655, and is included in Appendix A, pages 70a-71a.

JURISDICTION

This is a petition for certiorari to review a decision of the Fifth Circuit in an action brought in the District Court by local teamsters' unions under Section 301(a) of the Labor Management Relations Act. 28 USC Sec. 185(a). The decision enforced an "arbitration award" purporting to subject the Southern or

[1] References herein to Appendices A and B are cited by the designation "App." followed by the letter and page number.

BFL Division of Petitioner's operations to the National Master Freight Agreement. Among the issues presented is a relatively novel question of procedural due process: whether the courts may by summary judgment (or otherwise) enforce a decision of an alleged arbitral body as to its jurisdiction, where that body considered no facts, made no findings, stated no reasons supporting its conclusions, and arrived at its result in proceedings that, as the transcript shows, were a travesty. (Exhibit A *infra*, pages i-ix).

The decision of the Fifth Circuit was filed on June 30, 1970; a timely petition for rehearing was denied on September 3, 1970. The jurisdiction of this court is invoked under the provisions of 28 U.S.C. sec. 1254 (1).

QUESTIONS PRESENTED

(1) Was it error to enforce by summary judgment (or otherwise) a purported award of a Grievance Committee which professed to subject a Division of Petitioner's operations to a National Labor Agreement where the Grievance Committee overruled Petitioner's jurisdictional objections and decided the question without considering the applicable facts or receiving evidence and without making findings of fact or stating a basis for its conclusion?

(2) Should the courts summarily enforce the determination of a Grievance Committee deciding a substantial dispute as to jurisdiction under a Labor Agreement?

(3) Should the courts summarily enforce a decision of a Grievance Committee composed of five management representatives and five labor representatives, where the agreement permits the unions to strike if the Committee is deadlocked, and where the unions are not

precluded from striking to enforce the award of the Committee?

(4) Was it error for the Court of Appeals to enforce a purported decision of a Grievance Committee extending the jurisdiction of a National Labor Agreement to a Division of Petitioner despite decisions of the National Labor Relations Board, effective at the same time, requiring it to bargain in local units with respect to that Division?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the due process clause of the Fifth Amendment to the Constitution, U. S. Constitution Amendment V, and section 301(a) of the Labor Management Relations Act, 29 U.S.C. sec. 185(a). These are printed separately as Appendix B to this Petition.

STATEMENT

I. Summary of the Proceedings

On November 5, 1964, nine local teamsters' unions ("Respondents"), affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, filed this action against Petitioner under section 301(a) of the National Labor Management Relations Act, 29 U.S.C. sec. 185(a) (App. 1a, 2a). The same unions were concurrently and successfully asserting in proceedings before the Labor Board (see 154 NLRB 101) their right to represent employees of Petitioner's BFL Division in local-unit bargaining.

The purpose of the present action was to secure enforcement of a decision of a National Grievance Committee subjecting Petitioner's BFL Division to a Na-

tional Master Freight Agreement. (App. 1a, 16a). The National Master Freight Agreement is a multi-unit collective bargaining agreement executed directly or through agents on January 16, 1964 by numerous teamsters locals and motor transport companies throughout the country. (App. 20a).

Petitioner operates three divisions: a Western Division, a Texas Division and a Southern or BFL Division. Petitioner was a party to the National Master Freight Agreement as to its Western Division by reason of a power of attorney and an authorization which it had given to California Trucking Association (App. 18a).

Petitioner's Texas Division is unorganized and concededly is not subject to the National Agreement.

It is Petitioner's Southern or BFL Division that is involved in the present controversy. Petitioner had operated the routes and facilities comprising this Division since 1957 when it acquired the capital stock of D. C. Hall Transportation Company. From 1957 to July 1, 1964, Petitioner operated these routes and facilities through a wholly-owned subsidiary (BFL). On July 1, 1964, about six months after execution of the National Agreement and, by coincidence, on the same day that the National Agreement became operative, Petitioner absorbed BFL by merger. This gave rise to the unions' contention in this litigation that the BFL Division was subject to the National Agreement as an "accretion" or a "subsequently acquired operation". (App. 61a, 62a)

Hall's employees had been represented in collective bargaining under agreements between the Respondent locals and the company. Petitioner became subject to these agreements upon succeeding to Hall's operations.

A controversy thereafter arose between Petitioner and these locals, and the NLRB ruled that Petitioner must continue to bargain with the Respondent locals as representative of the employees in the four "appropriate bargaining units" which comprise what is now Petitioner's BFL Division. 154 NLRB 101; *Teamsters Local Unions* v. *National Labor Relations Board,* 370 F.2d 227 (D.C. Cir. 1966).

On October 1, 1964, despite the pendency of the proceedings before the NLRB to enforce their rights in pending local bargaining with respect to the units comprising Petitioner's BFL Division, the Respondent locals filed with the National Grievance Committee, constituted under Article 8 of the National Master Freight Agreement, a "Request for Interpretation of National Master Freight Agreement." This set forth the merger on July 1, 1964 of BFL into Petitioner and asserted that the National Master Freight Agreement applied to Petitioner's BFL units. (App. 24a-29a).

Petitioner believed that its BFL Division was not subject to the jurisdiction of the National Agreement for the following principal reasons: (1) Its authorization to its bargaining representative and power of attorney had been limited to its Western Division; (b) it was not intended or contemplated by either the unions or Petitioner that the BFL Division be included in the National Agreement; (c) the "accretion" or "subsequently acquired operations" clause of the Na- Agreement did not apply to the BFL Division because it had been part of Petitioner's operations at and before the time of execution of the Agreement; and (d) at the time of execution of the National Agreement and thereafter, the NLRB required Petitioners to

recognize and negotiate with the Respondent local unions as "separate appropriate units".

Accordingly, on November 4, 1964, Petitioner filed its "Special Appearance before the National Grievance Committee" challenging the Committee's jurisdiction to act, asserting that the subject matter was within the exclusive jurisdiction of the National Labor Relations Board in a pending proceeding, and "specifically object[ing] to any consideration of the merits." (App. 31a, 32a).

The Grievance Committee met on November 5, 1964. As required by the National Agreement, it was composed of five employer members and five union members under the leadership of Mr. James Hoffa. In the event of deadlock, the Union reserved the right to strike.

The Committee's proceedings were a travesty. Petitioner's jurisdictional objections were not discussed or considered despite a tentative effort by the acting chairman of the Grievance Committee (an industry member). He suggested, on the merits, that the Braswell pleading and correspondence showed that "factual" considerations (presumably relating to the history of the BFL Division, the limited scope of its authorization to the bargaining agent which signed the National Agreement, the NLRB proceedings, etc.) might be relevant. Mr. Hoffa brusquely rebuffed him and demanded that the decision be rendered. It was.

The Committee, at Mr. Hoffa's insistence, did not hear or consider any factual material. It peremptorily decided not only the question of its jurisdiction but the merits of the controversy: that is, it ruled,

without evidence or consideration of the facts, that Petitioner's BFL Division was subject to the terms of the National Agreement. No findings were made; no reasons were advanced for the decision. The entire transcript of the brief, peremptory "hearing" is included herein as Exhibit A, *infra* pp. i-ix.

On November 5, 1964, the same day that the Grievance Committee met in Washington, D. C., the unions filed their obviously pre-prepared suit in the District Court for the Western District of Texas (App. 7a) demanding enforcement of the Grievance Committee's decision.

II. The Decisions Below

The decisions below demonstrate that at no time were the facts relevant to determination of the controversy properly considered or adjudicated by any of the tribunals. The Grievance Committee peremptorily rejected any consideration of the facts. The District Court first decided the case for Petitioner, by summary judgment. This was reversed by the Court of Appeals without passing on the merits of the controversy which it held were solely committed to the decision of the Grievance Committee. On remand, the District Court entered summary judgment for the Unions, in accordance with the Court of Appeals' decision.

On appeal, the Court of Appeals affirmed the summary judgment granted by the District Court, again relying on the grounds that the court "may not weigh the merits of the questions which are before the arbitrator". (428 F.2d 1371 at 1373). The Court of Appeals had recognized the existence of relevant factual issues: for example, that 'the strife with BFL locals was evidentiary of the intent that the acquired termi-

nal provisions were to be limited to . . . the Western Division locals." But it held that these were matters going to "the merits of the arbitrable issue", to be urged "before the arbitral body and not there made." 392 F.2d 1 at 8). It totally ignored the fact of the kangaroo-court nature of the "arbitral" proceedings and the refusal to consider factual matters.

The Court of Appeals also seemed to recognize, in principle, the established rule that the courts and not the Grievance Committee must decide the Grievance Committee's jurisdiction where a substantial issue is raised. *John Wiley & Sons, Inc.* v. *Livingston,* 376 U.S. 543, 547-48 (1965). But it nevertheless proceeded to enforce the decision of the Grievance Committee that Petitioner's BFL Division was subject to the National Agreement, which the Grievance Committee made without considering the substantial factual issues or stating the reasons for its "interpretation" with respect to the substantial issues as to whether Petitioner's BFL Division was subject to the jurisdiction of the Committee or the National Agreement.

In chronological sequence, the decisions below may be summarized as follows:

1. *The First District Court Decision.* The action was filed on November 5, 1964. After hearing on cross motions for summary judgment on affidavits, the District Court entered its findings of fact and conclusions of law on July 7, 1966. It granted Petitioner's motion for summary judgment on "the controlling issue": that is, that the power of attorney and Authorization to Represent executed by Petitioner applied only to its Western Division and did not bind Petitioner's BFL Division. (App. 45a-54a).

2. *The First Court of Appeals Decision.* On March 25, 1968, the Fifth Circuit reversed (392 F.2d 1). It

held that the controlling issue was whether the courts should enforce the "arbitration award" and that the "award" must be enforced. It pointed to the provision in the National Agreement that subjected to the National Agreement "subsequently acquired operations". It stated that whether the BFL Division fell in this category was peculiarly appropriate for decision by an arbitral body; and since "We cannot [say] with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute" (392 F.2d at 7), it concluded that the "award" should be enforced and directed the District Court to enter summary judgment for the unions. (392 F.2d at 9). On June 28, 1968, the court modified the judgment by stating that "Our conclusion, rather than being styled a summary judgment or partial summary judgment for the unions, would more appropriately be styled a ruling as a matter of law. . . ." (395 F.2d 655 at 656).

The court nowhere noted the fact, which basically negates its reliance on the Grievance Committee's action, that the Grievance Committee did not discuss or comment on, or specifically indicate the reasons for its decision or even the bare fact, which the court appears to assume, that it was relying on the "accretions" or "subsequently acquired operations" clause of the agreement. All that appears is a recital by Mr. Hoffa of various sections of the National Agreement which included a bare reference to Article III, Section 1 which contains the "subsequently acquired" provisions.[2]

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[2] He said: 'Likewise, under Article III, Section 1 of the Agreement. Likewise, page 6 applies to the Union's contention that the interpretation of the contract in this particular case applies." (Exhibit A, *infra* p. v).

The relevant parts of Article 3 [III], Section 1 of the Agreement, concerning Recognition, set forth that ". . . this provision shall

3. *The Second District Court Decision on remand.* On November 8, 1969, after further proceedings before the District Court in which additional affidavits and motions were filed, the District Court struck Petitioner's defenses, reciting that the Court of Appeals had ruled that the "award" must be enforced (App. 10a, 11a) and that the court would not consider argument on the merits of the issue. Accordingly, it granted summary judgment for the unions. (App. 13a).

4. *The Final Decision of the Court of Appeals.* On June 30, 1970, the Fifth Circuit affirmed the decision of the District Court, granting summary judgment to the unions subject to a modification which is not here relevant. (App. 13a). A petition for rehearing *en banc* was denied on September 3, 1970 (App. B).

REASONS FOR GRANTING THE WRIT

1. The Court should rule that the courts will not enforce the decision of an arbitral committee under a labor relations contract unless its proceedings are conducted with diligence, fairness and the essentials of due process.[8] Specifically, its decision to be entitled to

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apply to all present and subsequently acquired operations and terminals of the Employer."; and to "all accretions to the bargaining unit including but not limited to newly established or acquired terminals, consolidations of terminals, etc." (App. 26a, 27a)

Mr. Hoffa's reference to page 6 of the National Agreement seems irrelevant since the page relates mainly to "Supplements" and to "Non covered units". (Art. 2, sec. 2, App. 27a)

[8] The Labor Board has always taken the position that it will enforce the award of an arbitral body only if it is fair and regular and not repugnant to the purpose of the Act. *Spielberg Manufacturing Co.*, 112 NLRB 1080, 1081-82 (1955); *Thomas D. Ramsey v. NLRB*, 327 F.2d 784, 787-88 (7th Cir., 1964); cert. den. 377 U.S. 1003 (1964).

judicial enforcement should demonstrate, as a minimum, that it has considered the relevant factual evidence, and should incorporate findings and a specific statement of the reasons for its conclusions. We are not aware of any reported decision directly in point. Compare *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).[4]

2. The Court should reiterate the rule that a substantial dispute as to whether a labor agreement applies to a particular operation is a jurisdictional issue that should be decided by the courts and not by a Grievance Committee. *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543, 547-48 (1965); *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, 241 (1961); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). Summary judgment is not an appropriate method for court decision on such a dispute. Cf. *White Motor Company* v. *United States*, 372 U.S. 253 (1963).

3. The Court should grant the writ to consider whether a decision of a Grievance Committee under a labor relations contract may be enforced by the courts where the Committee is composed of an equal number of labor and industry representatives and the contract permits the unions to strike if the Committee is deadlocked and also permits the unions to strike to enforce the award. The Court should consider whether such an agreement to arbitrate is "final and binding" within

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[4] "Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." 363 U.S. 593 at 597.

the meaning and with the effect specified by the "trilogy cases." *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 564, 567 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Company*, 363 U.S. 574, (1960); *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960). See also *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 455 (1957).

4. The Court should consider whether the existence of a National Labor Relations Board order to an employer, at the instance of labor unions, requiring that employer to bargain with these unions in local negotiations covering specified bargaining units precludes the courts from ordering the employer, at the instance of those same labor unions, to submit to the conflicting requirements of a National Labor Agreement. The Labor Board twice held that Petitioner was required to bargain with the locals in the four BFL units (141 NLRB 1154; 154 NLRB 101).[5]

It was Petitioner's position from the inception (see Special Appearance set forth at 392 F.2d (App. 62a, 63a) that since the Labor Board had already determined that Petitioner was required to bargain in the four BFL units, the decision of the Labor Board was controlling. The lower court's decision to the contrary is in conflict with this Court's holding in *Carey* v. *Westinghouse Electric Corporation*, 375 U.S. 261, 272 (1964):

> "Should the Board disagree with the arbiter, by ruling, for example, that the employees involved in the controversy are members of one bargaining unit or another, the Board's ruling would, of

[5] The District of Columbia Circuit enforced the final order of the Labor Board in *Teamsters Local Unions, et al.* v. *National Labor Relations Board*, 370 F.2d 227 (D.C. Cir. 1966).

course, take precedence; and, if the employer's action had been in accord with that ruling, it would not be liable for damages under Section 301.

Accordingly, enforcement by the Fifth Circuit of the arbitral award, in the face of the pre-existing determination by the Labor Board that Petitioner was required to bargain in the four BFL units results in assigning superiority to the Grievance Committee's proceedings over the final determination of the Labor Board.

CONCLUSION

Because the proceedings below have consequences in significant variance with controlling decisions of this Court and because of the importance of these issues:

It is respectfully submitted that the Court should grant Petitioner's prayer for a Writ of Certiorari.

Respectfully submitted,

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December
~~November~~ 1, 1970

EXHIBIT A

MEETING
NATIONAL GRIEVANCE COMMITTEE

STATLER HOTEL

Thursday, November 5, 1964
10:00 A.M.

PRESENT:

EMPLOYER MEMBERS OF THE NATIONAL GRIEVANCE COMMITTEE:

Ted Bauer, Chairman
Ray Beagle, General Counsel, Trucking Employers, Inc.
Al Defalco
Ben Throop
John Spickerman
Hal Franke
Daniel M. Gunn

UNION MEMBERS OF THE NATIONAL GRIEVANCE COMMITTEE:

James R. Hoffa, General President, International Brotherhood of Teamsters
Verne Milton
Ted Merrill
Weldon Mathis
Charles Winters
E. F. Johnson
C. H. Augustine
Roy Williams
Murray W. Miller
Walter Shea
Tom Flynn

Also Present:

David Previent
J. M. Lacy
L.N.D. Wells, Jr., Counsel for Teamsters Union

MR. HOFFA: In accordance with the rules, I would like to have designated those individuals that are going to represent the various areas as such.

We will take the Western Conference first.

MR. MERRILL: Ted Merrill, Western Conference.

MR. MILTON: Verne Milton, Western Conference.

MR. HOFFA: Southern Conference.

MR. MATHES: Weldon Mathes, Southern Conference.

MR. HOFFA: Eastern Conference?

MR. SHEA: Walter Shea, Eastern Conference.

MR. HOFFA: Central Conference?

MR. WILLIAMS: Roy Williams and Jim Hoffa.

MR. HOFFA: Gentlemen, under the rules, the previous Chairman opens the meeting, and it becomes necessary to have a Chairman from the other side nominated to take over the meeting. The last time I was Chairman, so I will open the meeting officially.

This is a regular called meeting of the National Grievance Committee for the purpose of deciding issues that are brought before the Committee in accordance with the rules, terms and procedures of the National Master Freight Agreement.

In this particular instance it is the letter of October 1, 1964, addressed by Murray W. Miller, Chairman, Area Conference of the Southern Conference, concerning the request for interpretation, National Master Freight Agreement, Brasswell Motor Freight Lines.

With that it becomes the responsibility of the operators to delegate, at this time, a Chairman for this particular meeting.

MR. BAUER: The operators have designated that I, Ted Bauer, will serve as Chairman of this meeting for the

Operators. I would like to request that the Operators Committee, if they find it necessary to speak, preface any remarks with their name, for the benefit of the Reporter.

MR. HOFFA: The same will apply on our side, too.

Mr. Chairman, speaking in behalf of the four Conferences and the delegates that are representing those Conferences, as I stated before, we are here today for a request for interpretation, National Master Freight Agreement, Braswell Motor Freight Lines, Inc. Everybody has received the communications from Murray W. Miller, also to the Employer Secretary; National Grievance Committee, Union Secretary; both by certified mail.

In addition to that, you have a summary of the request for interpretation attached to the identifying communications. Likewise, you have a letter of October 8, and this letter was a communication to Braswell Motor Freight Lines, 301 Reynolds Street, El Paso, Texas; H. R. Moore, President, Southwest Operators Association, 615 Blanton Towers, 3300 Mockingbird, Dallas, Texas.

Copies went to the Western Conference of Teamsters, California Trucking Association, James R. Hoffa, and Ray Beagle. Likewise, copies of letters went to Mr. Robert H. Cowan, Secretary for the Employers, 434 Stahlman Building, Nashville, Tennessee; Ralph Dixon, Secretary for the Union, 1330 North Industrial Boulevard, Dallas 7, Texas, again attaching the request for interpretation and history of the request to those individuals.

So, with all of the communications being made a part of the record, I would now like to present the grievance in accordance with the contract provisions.

It is the contention of the Union that when the truckers, through the CTA, California Truckers Association gave their power of attorney to the Employers Committee—to the Truckers Employers, Inc.—for purpose of collective bargaining, notifying the Unions Negotiating Committee whom they represent, why we sat down in good faith, pursuant to the notices properly sent out under the 30 and

60-day requirement of the Federal Mediation Board, and the terms of the agreement, and negotiated a new contract; contract being ratified by the members of the Union and being ratified by the Employers Counsel.

That contract, running from the period of February 1, 1964, to March 31, 1967, with the understanding that any contract which expired at a later date would immediately place into effect the terms and conditions identical to those of February 1 in the Central and Southern Conference of Teamsters and the New England freight carriers.

All contracts now, to the best of my knowledge, in the United States, that were negotiated at the time of this meeting in Chicago, where we consummated the contract, are now in effect.

The contention of the Union is that Braswell Motor Freight Lines, as now known, is bound by the terms and conditions of this Agreement.

Under Article I, Section 1, on page two it states as follows:

"The Employer consists of associations, members of associations who have given their authorizations to the Associations to execute this Agreement and Supplemental Agreements, members of associations who have not given such powers of attorney and individual Employers who become signatory to this Agreement and Supplemental Agreements as hereinafter set forth.

"The signatory associations entered into this Agreement and Supplemental Agreements on behalf of their members under and as limited by their authorizations."

Likewise, you will note that under Article II, page three, Section 1, it reads as follows: "The execution of this Master Agreement on the part of the Employer shall cover all operations of the Employer which are covered by this Agreement, and shall have application to the work performed within the classifications defined and set forth in the Agreements supplemental hereto."

Likewise, under Article III, Section 1 of the Agreement. Likewise, page 6 applies to the Union's contention that the interpretation of the contract in this particular case applies.

Now, it is the Union's position that Article I, Article II, Article III, as outlined in my opening statement, Braswell Motor Freight is an Employer bound by the terms and conditions of this contract, and we are requesting that the Employers agree with the Union that the proper interpretation and application of the contract binds the Braswell Motor Freight Lines to comply with the terms and conditions of the negotiated contract that is currently into effect, known as the National Master Freight Agreement, which covers the dock-city and road operations of carriers who had previously given power of attorney to Truckers, Inc., to negotiate a binding collective bargaining contract.

We asked that the Employers vote with the Union in interpreting this contract, and that the Employers in question, as well as all other Employers who give their power of attorney, are bound by this Agreement.

MR. BAUER: Gentlemen, at this point, based on the mailing of the Braswell Freight Lines, a two-page presentation, and on some of the correspondence addressed to the Committee by Murray Miller, we are not in agreement at this time that this is an interpretation; that it could possibly be a factual case.

MR. HOFFA: I do not understand your words.

MR. BAUER: It could possibly be a factual case, rather than an interpretation.

MR. HOFFA: Under what theory? What section are you referring to and what articles do you depend upon for the fact that this is a factual case, not an interpretation?

MR. BAUER: My statement is not prefaced on a section nor on an article, but on the background of the case and the correspondence thereto.

MR. HOFFA: Let me say this, that the Operators Committee are bound by the terms and conditions of the bar-

gaining agreement that constitutes and establishes this Committee with certain authority in interpreting the contract and settling grievances, and therefore Employers Committee, being properly convened, are required by this contract to limit their discussions to the evidence that is submitted and by the language of the Agreement.

Therefore, I make a request upon the Employers to point out upon what section of the contract can you determine that this is a factual case, since it is not an individual grievance of a particular employer in regards to wages and hours. But, it is an interpretation request to determine the application of the contract to a given employer as stipulated in the communications we have directed to the bona fide representatives of the Operators Committee that brought us here today.

MR. BAUER: The Operators Committee would like to have a five-minute recess, for the record.

(Whereupon, a recess was taken.)

MR. BAUER: On the record. We would like for the record to show that the Company did not appear. We have, from the Company, a letter addressed to Mr. Ray Beagle, Administrator for TEI, we would like to have Mr. Beagle read it into the record or present it as a portion of the record.

MR. HOFFA: What is the value of cluttering up the record, if it is a matter already in writing?

MR. BAUER: We will agree then, that it is a portion of the record.

MR. HOFFA: I now view that your suggestion is inappropriate since it is in violation of the grievance procedure of the Master Agreement, and that the submission to this Committee can only be factual information that was submitted, either at a State Hearing or at a Joint Area Hearing under the terms of a contract, and we do not accept material that is submitted to this Committee where the

operator absences himself voluntarily from the Committee with no right of cross-examination.

MR. BAUER: Mr. Chairman, it is the intent of the Chairman of the Operators Committee to establish with this letter that the Company was not present at the hearing.

MR. HOFFA: We recognize the Company is not at the hearing, and that is the only reason that you are submitting the letter, that is one question. But, if you are submitting the letter for any purpose other than to show that the company did not come here, and it did not establish a factual presentation to this Committee, in compliance with the contract, that is one thing.

MR. BAUER: Mr. Chairman, I believe the letter will speak for itself, as to its intent.

MR. HOFFA: I would like to know from the Operators—I would like to know whether you are representing this letter to show that the company did not appear here, or are you trying to make this letter a part of the record for some factual information?

MR. THROOP: We have a situation here where the Chairman of the Employers Committee, the Chairman of our Grievance Meeting today, Mr. Bauer, is also attempting to act as spokesman for the Employers.

It puts him in an uncomfortable position, being unable to rule on the appropriateness or inappropriateness of entry into the record this disputed piece of evidence. For that reason, I would like to suggest that the Employers caucus just for a moment in the hall, and I promise you it will not be long.

MR. HOFFA: What company do you represent?

MR. THROOP: York Transportation.

(Whereupon, a short recess was taken.)

MR. HOFFA: Mr. Chairman, while you were out of the room the Union Committee discussed the question of your prior statement, and we would like to make this statement for the record.

The letter, a copy of which has been made available to all members of the Committee, may be made part of the record. However, I now move that we proceed to consideration of the merits of the matter before us.

MR. BAUER: I second the motion.

MR. HOFFA: You would have to show that Spickerman seconded the motion.

MR. BAUER: All those in favor?

(There was a showing of "ayes.")

MR. BAUER: Contrary?

(No response.)

MR. BAUER: Unanimous.

MR. HOFFA: Gentlemen, in recessing I assumed you discussed the statements that I made prior to your recess. I know that you have the documents before you, the same as I do, that were submitted by Dusty Miller of the Southern Conference, Director, seeking the interpretation of the Articles that had been aforementioned.

Did you come to any conclusion on the motion that I made? If not, I would like to repeat the motion.

MR. BAUER: We had a general discussion, thoroughly reviewing some happenings of the national negotiations. We have caucused among the members of the original Committee, as well as the Labor Advisory Committee, and the Chairman will entertain the motion.

MR. HOFFA: I move you, Mr. Chairman, that the intent, purpose and meaning of Articles I, II and III of the National Master Freight Agreement as applied in this case require Braswell Motor Freight Lines apply the National Master Freight, Road, and Local Cartage Agreements and supplements thereto to the operation formerly known as Braswell Freight Lines Corporation and now merged into Braswell Motor Freight Lines Corporation.

MR. BAUER: Is there any discussion?

(No response.)

MR. BAUER: All in favor?

(There was a showing of "ayes.")

MR. BAUER: Contrary?

(No response.)

MR. BAUER: The motion is carried.

MR. HOFFA: Mr. Chairman, before we adjourn, I think that the record shows that when Wally Shea stated he was here representing the Eastern Conference, he was here as the alternate, and now the delegate Tom Flynn is here, and under the rules he is entitled to vote.

Flynn cast a vote for each of the Conferences.

MR. PREVIENT: We wanted the record to show that, because it did not show you to be here at the beginning.

MR. BAUER: The record will speak for itself.

MR. HOFFA: There is one other problem while we are here which involves the whole industry, and I would like to talk about it off the record.

MR. BAUER: Before we go off the record, I would like to say, for the record, that in the voting, for the Operators Committee, Mr. Defalco did not vote. As we are entitled to an equal number of votes, we only recorded five votes.

MR. HOFFA: We will go off the record.

(Whereupon, at 1:10 p.m. the record portion of the National Grievance Committee was adjourned.)